

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SIAOSILEPELENISE L. TUAIMALO,

Defendant.

No. CR-11-0184-EFS

**ORDER DENYING USAO'S MOTION TO
RECONSIDER**

Before the Court, without oral argument, is the U.S. Attorney's Office's (USAO) Motion to Reconsider, ECF No. 209, in which the USAO asks the Court to revisit its decision to grant Defendant Siasilepelenise L. Tuaimalo's Motion to Exclude Justin Beaudry as a Witness at Trial, ECF No. 204. Defendant's motion sought to exclude Mr. Beaudry because the USAO did not disclose Mr. Beaudry's existence or its intent to call him as a trial witness until February 13, 2013, six days before trial. As Defendant correctly observed, the Court instructed the USAO to "disclose its witness list for trial to the Defendant no less than ten (10) days prior to trial." ECF No. 35, at 2. The Court granted Defendant's motion to exclude Mr. Beaudry based on the USAO's failure to comply with this deadline. The USAO now seeks reconsideration of that ruling.

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1 The Court's authority to exclude Mr. Beaudry as a trial witness,
2 whether characterized as the enforcement of its August 28, 2012 Order,
3 ECF No. 35, or as a sanction for the USAO's non-compliance with that
4 Order, falls soundly within the Court's discretion. *See United States*
5 *v. W.R. Grace*, 526 F.3d 499, 514-516 (9th Cir. 2008). The Ninth
6 Circuit has unequivocally upheld the authority of a district court "to
7 manage its docket in enforcing a valid pretrial discovery order,"
8 particularly in the context of excluding witnesses for untimely
9 disclosure in violation of a case management order. *Id.* at 516. The
10 USAO relies on 18 U.S.C. § 3500 in contending that Defendant's right
11 to due process was not violated, suggesting that the disclosure of Mr.
12 Beaudry to Defendant was sufficiently before trial to be "useful."
13 However, this argument misses the mark. The Court's decision to
14 exclude Mr. Beaudry was not based on a violation of Defendant's right
15 to due process but rather the USAO's unjustified violation of the
16 Court's pretrial discovery order.

17 Turning to the instant motion for reconsideration, the Court
18 still finds no justification to reverse its prior ruling. The USAO
19 asserts that it made "several unsuccessful attempts" to identify and
20 contact Mr. Beaudry, and that its efforts were hampered by witnesses
21 who provided false information. The USAO indicates that "[o]nce the
22 true identity [of Mr. Beaudry] was determined, time was needed to
23 contact [him] and arrange for his appearance to confirm he was
24 actually the person [being sought]." ECF No. 209, at 2-3. These
25 assertions lack detail. At a bare minimum, the Court cannot determine
26 how or when the USAO learned of Mr. Beaudry's true identity, much less

1 the nature and extent of its unsuccessful efforts to do so prior to
2 the witness-disclosure deadline. Based on the submitted materials,
3 the Court cannot find good cause to excuse the USAO's failure to
4 comply with that deadline. For that reason, the USAO's Motion to
5 Reconsider, **ECF No. 209**, is **DENIED**.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
7 Order and provide copies to all counsel.

8 **DATED** this 19th day of February 2013.

9
10 s/Edward F. Shea
EDWARD F. SHEA
11 Senior United States District Judge
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